



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** BST Systems, Inc.--Request for Declaration of  
Entitlement to Costs

**File:** R-248310.2

**Date:** June 5, 1992

Sam Zalman Gdanski, Esq., for the protester,  
Linda S. Lebowitz, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

### DIGEST

Protester is not entitled to the costs of filing and  
pursuing its protest where the agency promptly took  
corrective action within 2 weeks of when the protest was  
filed.

### DECISION

BST Systems, Inc. requests that our Office declare it  
entitled to recover the reasonable costs of filing and  
pursuing its protest challenging the evaluation of its  
proposal under request for proposals (RFP) No. N00104-91-R-  
JC26, issued by the Department of the Navy.

We deny the request.

BST, a small business concern, filed its protest on  
April 10, 1992. On April 22, the agency notified our Office  
that it had improperly evaluated proposals and accordingly,  
had taken corrective action by reevaluating all proposals,  
including BST's proposal. After reevaluation, BST was the  
low evaluated offeror. However, because the contracting  
officer determined BST was nonresponsible, the agency  
referred the matter of BST's responsibility to the Small  
Business Administration for possible issuance of a  
certificate of competency (COC). The agency stated that if  
a COC were issued, the contract would be awarded to BST.  
Based on the corrective action taken by the agency, on  
April 23, our Office dismissed BST's protest as academic.

On May 20, BST filed a request for a declaration of  
entitlement to its protest costs, including reasonable  
attorneys' fees, incurred in filing and pursuing its protest  
with our Office.

Where an agency takes corrective action prior to our issuing a decision on the merits of a protest, we may declare a protester entitled to "recover reasonable costs of filing and pursuing the protest," Bid Protest Regulations, 4 C.F.R. § 21.6 (e) (1992). This regulatory provision is intended to allow the award of costs when agencies unduly delay taking corrective action in the face of a clearly meritorious protest. Oklahoma Indian Corp.--Claim for Costs, 70 Comp. Gen. 558 (1991), 91-1 CPD ¶ 558. A protester is not entitled to costs where, under the facts and circumstances of a given case, an agency takes prompt corrective action in response to the protest. Id.

Here, the agency took corrective action within 2 weeks of BST's filing of the protest. Corrective action taken by an agency within 2 weeks of when the protest was filed does not constitute undue delay in taking corrective action. Id. In fact, such action, taken early in the protest process, is precisely the kind of prompt reaction to a protest that our regulation is designed to encourage. It provides no basis for a determination that the payment of protest costs is warranted. Id. Accordingly, we deny BST's request for a declaration of entitlement to costs.



Michael R. Golden  
Assistant General Counsel